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### **SUBPART 5346.7—WARRANTIES**

#### **5346.702 General.**

(c) *Warranty cost benefits.*

(1) Contracting officers shall require contractors to propose and justify warranty costs on an over and above basis. Exclude any costs, such as quality assurance, sustaining engineering, and product support costs, that would have been incurred without the warranty. Contracting officers shall ask DCAA and the contract administration office to evaluate the contractor's proposed warranty costs and shall specifically address the warranty acquisition costs in the price negotiation memorandum.

(2) The contracting officer shall require the contractor to separately identify actual warranty costs in cost reporting, either as a stand-alone report or as part of another cost report.

#### **5346.706 Warranty terms and conditions.**

(b)(5) *Markings.* The contracting officer shall ensure that the warranty clause (see 5346.710) requires the contractor to mark warranted items to be conspicuous to a person removing the item from service. The marking shall specifically state the duration or conditions of the warranty. The marking shall state whether the warranty period is determined by a specific expiration date or number of days after shipping or is based on some other criteria, such as the number of landings, flight hours, or operating hours.

#### **5346.708 Warranties of data.**

When obtaining a warranty on technical data in an acquisition data package, the contracting officer shall ensure that:

(1) Contract specifications and requirements define what constitutes a complete, accurate, and adequate acquisition data package;

(2) The warranty period will cover the Government's intended first use of the package for a competitive procurement; and

(3) Extended contractor liability is obtained, when cost effective. See the alternate endings to the clause at DFARS 252.246-7001, Warranty of Data.

#### **5346.710 Contract clauses.**

The specific warranty clause included in a weapon system contract shall be consistent with the weapon system warranty plan required in 5346.770-90 (see AFM 64-110, Weapon System Warranties).

#### **5346.770 Warranties in weapon system acquisitions.**

##### **5346.770-2 Policy.**

(c) See AFM 64-110, Weapon System Warranties, for additional guidance concerning redesign as a remedy.

##### **5346.770-3 Tailoring warranty terms and conditions.**

Contracting officers should exclude correction of defects that are beyond the reasonable control and not attributable to any fault of the contractor (e.g., those resulting from combat damage, Government misuse, and accidental damage.) In addition, the contracting officer shall consider factors such as the technical risk, contractor financial risk, and other program uncertainties in establishing limitations to ensure a cost effective warranty. Establishing dollar ceilings on contractor liabilities and exempting a portion of the weapon system specification from the performance warranty are examples of

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limitations that contracting officers may agree to if they are reasonably shown to be in the best interest of the Government. However, an essential performance requirement (EPR) shall not be exempted.

**5346.770-5 Exemption for alternate source contractor(s).**

Submit exemption requests to SAF/AQCS. Justify using the format for waivers (see DFARS 246.770-8 (c)).

**5346.770-6 Applicability to foreign military sales (FMS).**

Use this subpart to the maximum extent possible when buying weapon systems from foreign governments. If the foreign government does not include contract warranty provisions, process a waiver in accordance with DFARS 246.770-8 (c). Use the interests of national defense exception (see AFM 64-110).

**5346.770-8 Waiver and notification procedures.**

The Assistant Secretary of the Air Force for Acquisition (SAF/AQ) has waiver authority (nondelegable). See AFM 64-110 for requirements for submitting waiver requests to SAF/AQCS.

**5346.770-90 Air Force warranty procedures.**

(a) *Planning.* A warranty plan is required for all weapon system warranties. For nonweapon systems, a plan is required when more than one MAJCOM will provide significant support in the acquisition or administration of the warranty. Contracting officers shall include the warranty plan in the contract file (see AFM 64-110).

(b) *Warranty distribution.* MAJCOMs, FOAs, and DRUs that award contracts with weapon system warranties shall establish procedures to accomplish the reporting requirements (see AFM 64-110).

(c) *Warranty administration.* See AFM 64-110 for policies and procedures for administration of weapon system warranties.

**5346.770-91 Establishing essential performance requirements.**

(a) MAJCOMs shall establish procedures for establishing essential performance requirements (EPRs). Authority for designating EPRs is delegated to the commanders of the MAJCOMs with power to redelegate.

(b) Warranty plans shall clearly identify the procedures used to establish each EPR. EPRs may cover the performance of one or more items. The contracting officer shall ensure that:

(1) The duration of the EPR warranty is long enough to determine that EPR requirements are satisfied; and

(2) The contract will permit the contracting officer to take appropriate corrective action if the item fails to satisfy the EPR requirement, even in cases where the EPR does not designate specific types of failures or (in the operation of a group or fleet of items) a mean failure rate for a specified period. (See AFM 64-110.)